

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIE LUXE INTERNATIONAL, LLC AND MARJORIE
GUBELMANN RAEIN,

Plaintiffs,

v.

DANIEL BENEDICT, MICHELE BROWN AND DANIEL
BENEDICT DESIGNS, INC.

Defendants.

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: 08 Civ. 5023 (LAP)(GWG)

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: **PLAINTIFFS' REPLY TO**

: **DEFENDANT BENEDICT'S**

: **COUNTERCLAIMS**

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Plaintiffs Vie Luxe International, LLC ("Vie Luxe") and Marjorie Gubelmann Raein (together, the "Plaintiffs"), by their attorneys, Seward & Kissel LLP, for their reply to the Counterclaims of Defendant Daniel Benedict ("Defendant Benedict"), herein allege as follows:

1. Deny the allegations contained in Paragraphs 133 and 135 of the Counterclaims.
2. Deny the allegations contained in Paragraph 134 of the Counterclaims, except state that Plaintiffs and Defendant Benedict entered into the Second Amended Operating Agreement of Vie Luxe International, LLC dated June 9, 2006 (the "Second Operating Agreement"), which included express terms and conditions all of which had to be satisfied for Defendant Benedict to be eligible to receive an increase in compensation, but that all of such terms and conditions were not satisfied, and respectfully refers the Court to the Second Operating Agreement for the true and correct contents thereof.

FIRST DEFENSE

3. The Counterclaims fail to state a claim upon which relief may be granted as a matter of law.

SECOND DEFENSE

4. The Counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

THIRD DEFENSE

5. The Counterclaims are barred, in whole or in part, by the Statute of Frauds.

FOURTH DEFENSE

6. The Counterclaims are barred, in whole or in part, by the parol evidence rule.

FIFTH DEFENSE

7. The Counterclaims are barred, in whole or in part, by the doctrines of laches, waiver, acquiescence and estoppel.

SIXTH DEFENSE

8. The Counterclaims are barred because they would result in unjust enrichment.

SEVENTH DEFENSE

9. Defendant Benedict failed to meet the express terms and conditions set forth in the Second Operating Agreement necessary to trigger any increase in compensation.

10. Defendant Benedict was properly terminated for Cause pursuant to the Second Operating Agreement.

EIGHTH DEFENSE

11. Defendant Benedict breached his fiduciary duties to Plaintiffs by establishing a competing business, improperly soliciting Vie Luxe's current and prospective clients, interfering with Vie Luxe's current and prospective business relationships and hiring Vie

Luxe's former salesperson, and wrongfully deleting Vie Luxe business information off of Vie Luxe's computer, all while claiming that he continues to hold a membership interest in Vie Luxe.

NINTH DEFENSE

12. Defendant Benedict breached the Second Operating Agreement and the Membership Interest Acquisition Agreement dated May 1, 2004 by improperly soliciting Vie Luxe's current and prospective clients, interfering with Vie Luxe's current and prospective business relationships and hiring Vie Luxe's former salesperson, all in violation of his express contractual obligations thereunder.

TENTH DEFENSE

13. Defendant Benedict is engaging in unfair competition with Vie Luxe.

WHEREFORE, Plaintiffs demand judgment: (1) dismissing the Defendant Benedict's counterclaims; (2) awarding Plaintiffs their attorneys fees, costs and expenses; and (3) granting Plaintiffs such other, further, and different relief as to the Court may seem just and proper.

New York, New York
July 22, 2008

SEWARD & KISSEL LLP

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